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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,067	03/03/2004	Robert P. Julius	NPP 3.0-014	4206

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EXAMINER

BOLLINGER, DAVID H

ART UNIT PAPER NUMBER

3653

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/792,067	JULIUS, ROBERT P.	
	Examiner	Art Unit	
	David H. Bollinger	3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-82 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 66-82 is/are allowed.
- 6) ☒ Claim(s) 1-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1 through 21, 34 and 43 through 65 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is indefinite because it is unclear whether the structures recited in lines 1-4 of the claim comprise a part of the claimed invention. Lines 1-4 recite structure of a container with dispensing a feature, which in the remainder of the claim are positively recited in combination with the elements which applicant recites as comprising the dispenser. Accordingly, it is unclear what combination of elements comprises the invention to be claimed.

In claim 10 line 2, claim 11 lines 1-2, claim 12 lines 1-2 and claim 13 lines 1-2, the recitation "said at least one heater" lacks antecedent basis as no heater has been previously recited, therefore; it is not clearly understood how the at least one heater relates to the other elements.

In claim 14 line 2, the recitation "said heater" lacks antecedent basis as no heater has been previously recited, therefore; it is not clearly understood how the heater relates to the other claimed elements.

In claim 15 lines 1-2, the recitation "said actuation means" lacks antecedent basis since actuation means has not been previously recited. Accordingly, it is not clearly understood how the actuation means relates to the other claimed elements and what the actuation means actuates.

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In claims 16 and 17 lines 1-2, the language "said switch" lacks antecedent basis.

In claim 18 lines 1-2, the language "said first and second heater portions" lacks antecedent basis.

In claim 19 lines 1-2, the language "said second support member" lacks antecedent basis.

Claim 20 is indefinite because it recites structural elements of the container which are not clearly defined by claim 1 as being part of the dispenser. This further confuses the issue as to what comprises the claimed dispenser and what does not comprise a part of the claimed dispenser.

In claim 34 lines 3-4, the language "the second side open area" lacks antecedent basis, therefore; it is not clearly understood to what this language is referring.

Claim 43 is indefinite because it is unclear whether the structures recited in lines 1-4 of the claim comprise a part of the claimed invention. Lines 1-4 recite structure of a container with a dispensing feature, which in the remainder of the claim are recited in combination with structural elements the claims appear to define as the dispenser. Accordingly, it is unclear whether the elements of the container are claimed in combination with the elements of the "dispenser" receiving the container.

In claim 46 lines 7-8 and lines 9, the language "said support member" lacks antecedent basis.

In claim 48 lines 2, the language "said support member" lacks antecedent basis.

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Claim 49 is indefinite because it is unclear whether the structure recited in lines 1-3 of the claim comprises a part of the claimed invention. Lines 1-3 recite structure of a container with a dispensing feature, which in the remainder of the claim are recited in combination with structural elements the claims appear to define as the dispenser. Accordingly, it is unclear whether the elements of the container are claimed in combination with the elements of the "dispenser" receiving the container.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 through 42 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Julius '360.

5. Claims 43 through 65 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

6. Claims 66 through 82 are allowed.


7. Applicant's arguments filed 3 October 2005 have been fully considered but they are not persuasive. Applicant has argued claims clearly recite the structure of the dispenser and not the container recited in the preamble. It is the examiner's position that the claims recite the structure of the container and its association with the structure of the applicant states to be the dispenser that it makes the claims indefinite as related above in the rejection under 35 USC 112 second paragraph.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David H. Bollinger whose telephone number is 571-272-6935. The examiner can normally be reached on Monday through Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Walsh, can be reached on 571-272-6944. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


David H Bollinger
Primary Examiner 12/22/05
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